IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 11..4..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos.3547 and 9558 of 2006 and
10953 and 10979 of 2007
and
W.P.M.P.No.3777 of 2006 in W.P.No.3547 of 2006
M.P.Nos. 1 and 2 of 2007 in W.P.No.10953 of 2007 and M.P.Nos.1 and 2 of 2007 in W.P.No.10979 of 2007

V.Veeramani .. Petitioner in W.P.No.3547 of 2006 &
W.P.No.10953 of 2007

G.Balasubramanian .. Petitioner in W.P.No.9558 of 2006 &
W.P.No.10979 of 2007

vs.

State of Tamil Nadu
Rep. By its Secretary to Government
Home (Pol IX) Department
Chennai - 9 .. R1 in W.P.Nos.10953 & 10979 of 2007

The Director General of Police
Kamarajar Salai
Chennai-4.

The Tamil Nadu Uniformed Services
Recruitment Board
Anna Salai
Chennai .. RR1 and 2 in W.P.Nos.3547 & 9558 /06
RR1 and 3 in W.P.Nos.10953 & 10979/07

W.P. Nos. 3547 and 9558 of 2006 are filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorarified Mandamus calling for the entire records connected with the impugned order of the first respondent made in his proceedings in Na.Ka.No.211058/Appointment - 3/2005 dated 28.11.2005 and Na.Ka.No.07991/Nityamanam.1 (1) / 2006-14 dated 23.01.2006 respectively, to quash the same and to direct the respondents to issue appropriate orders of appointment in favour of the petitioners as Police constable Grade - II forthwith.

W.P.Nos.10953 and 10979 of 2007 filed under Article 226 of the

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Constitution of India seeking for issuance of declaration declaring that the Explanation 1 to Rule 14(b)(iv) of the Tamil Nadu Special Police Subordinate Service rules 1978 and declare the same as unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India.

For Petitioner in both W.Ps. : Mr.Radhakrishnan for Mr.S.Sathiachandran
For Respondents in both W.Ps. : Mrs.C.K.Vishnupriya, GA

C O M M O N O R D E R

In W.P.No.9558 of 2006, the petitioner challenges the order dated 23.01.2006 passed by the first respondent Director General of Police wherein and by which he was denied appointment for the post of Police Constable Grade II in the selection made for the year 2003-04. Though the petitioner was selected for the written test, as per the Rules in existence, his antecedents and character were verified and it was found that a case under Sections 323, 324, and 506(ii) IPC was registered against the petitioner on 28.10.2003 by the Kivalur Police Station in Crime No.794 of 2003 and the petitioner was shown as third accused. The case was tried by the Judicial Magistrate - I, Nagapattinam and in view of the fact that the witnesses turned hostile and again, the complainant and the injured filed a compromise memo, which was also rejected, the petitioner was acquitted by giving benefit of doubt under Section 248(1) Cr.P.C. vide judgment dated 16.11.2005. Therefore, he had challenged the order of the first respondent in writ petition No.9558 of 2006. Subsequently, the writ petition was admitted on 06.4.2006. The respondents have entered appearance in the said writ petition and had filed the counter affidavit dated 24.11.2006 sworn to by the Inspector General of Police attached to the Office of the Director General of Police and in that, it was stated that an explanation to Rule 14(b) introduced by way of G.O.Ms.No.101, Home (Police IX) Department dated 30.01.2003 has been added and since the petitioner's case was hit by the Explanation I, the order passed by the first respondent is perfectly in order. It was thereafter, the petitioner filed the second writ petition in W.P.No.10979 of 2007 challenging the constitutional validity of the Explanation 1 to Rule 14 (b)(iv) of the Tamil Nadu Special Police Subordinate Rules 1978 [for short, 'Rules'] as introduced by G.O.Ms.No.101, Home (Police IX) Department dated 30.01.2003.

2. When this writ petition came up for admission, this was taken up along with the first writ petition. In the meanwhile, another petitioner by name V.Veeramani, who was similarly placed, had filed W.P.No.3547 of 2006 challenging the order dated 28.11.2005 passed by the first respondent not selecting him to the post of Police Constable Grade II in the Police Department. In view of the defence taken by the respondent Police, he has filed another writ petition being W.P.No.10953 of 2007 challenging the constitutional validity of Explanation 1 to Rule 14(b)(iv). This was also heard along with the other writ petitions in view of the common issues raised by both the petitioners.

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3. I have heard the arguments of Mr.M.Radhakrishnan, learned counsel appearing for Mr.S.Sathiachandran, learned counsel for the petitioners and Mrs.C.K.Vishnupriya, learned Government Advocate, taking notice for the respondents and have perused the records.

4. Since the validity of the orders attacked in W.P.Nos.9558 of 2006 and 3547 of 2006 depends upon the vires of Explanation (1) to Rule 14(b)(iv) of the Rules, the learned counsel appearing for the petitioners was directed to address arguments on the subsequent writ petitions.

5. Mr.Radhakrishnan, learned counsel appearing for the writ petitioners submitted that the Rule is violative of Article 14 of the Constitution of India as it is arbitrary and unconstitutional. The Explanation introduced by the amendment dated 30.01.2003 introduced a discriminatory treatment towards persons, who are even acquitted of the charges levelled against them, and they have been denied entry into the Police force and hence, it is violative of Articles 14 and 21 of the Constitution of India. He also submitted that the Explanation is vague because it has not been purely defined as to what is the criminal case and it is elastic even to cover a conviction by way of fine in a traffic offence and hence, it suffers from the vice of vagueness. Lastly, he submitted that by disqualifying persons on this ground, even after acquittal, more time limit is prescribed for the effect of disqualification and a person is removed, he is condemned for life by such a disqualification and this was not the intention of any Rule made under Article 309 of Constitution of India.

6. Per contra, it was submitted by the learned Government Advocate representing the State that in the present cases, the State is employing persons and, therefore, they are entitled to prescribe qualification for any post in the service of the State and considering the fact that the present recruitment is for Uniformed Force, the selection process should be careful and persons with criminal records should not be allowed to enter into the Police force. Further, it was also stated that there was no discrimination nor the Rule is arbitrary so as to come within the wrath of Article 14 of the Constitution of India. The Rules are sufficiently clear with reference to the disqualification of persons, who have got a technical acquittal and the Rule does not prohibit persons, who have complete acquittal on merits. The Explanation only amplifies the text found in Sub-Rule 2, viz., that the person before entering into Government service should have such character and antecedent so as to qualify himself for such service. Since the said Rule is general in nature by the introduction of Sub-Rule 4 and Explanation, a sufficient guideline has been granted and that the term 'criminal case' can be understood by any reasonable person and the attack that it is vague and incapable of being misused, does not arise. Further, it is also stated that if the State sets a standard for entry into service and prescribes certain disqualification, such a disqualification will continue and the attack by stating that it is a

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condemnation for life is unwarranted.

7. Before deciding the violation of the Rule, it is necessary to reproduce the entire Rule as it stands today after the amendment.

> "14 (b) No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority.
>
> (i) that he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service and
> (ii) that his character and antecedents are such as to qualify him for such service; and
> (iii) that such a person does not have more than one wife living.
> Explanation:- (1) A person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant "turned hostile" shall be treated as person involved in a criminal case.
>
> Explanation 2:- A person involved in a criminal case at the time of Police Verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment."
>
> [Emphasis added]

8. Learned counsel for the petitioners placed reliance upon the judgment of the Supreme Court reported in AIR 1996 SC 3300 [Pawan Kumar vs. State of Haryana and another] and relied upon paragraph 14 of the judgment, which reads as follows:

> Para 14:"Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary Courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are, therefore, necessary in raising the toleration limits with regard to petty

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offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs. 2,000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in Government service. This can brook no delay, whatsoever."

Relying on the same, learned counsel stated that as directed by the Supreme Court, the State has not amended the Rules and by the present impugned Rule, even persons with Traffic, Municipal and other violations and petty offence under I.P.C. will be disqualified and, therefore, the rule is bad. However, the said decision does not lay down a proposition so as to hold that the impugned Rule is unconstitutional.

9. On the contrary, the Supreme Court in its decision referred to above, had only considered whether the punishment under Section 294 IPC deals with obscene acts and will amount to an offence involving moral turpitude. In fact, the following passage extracted from the said decision found in paragraph 13 will clearly show the real import of the said decision.

Para 13: "... We are rather unhappy to note that all the three Courts below, even when invited to judge the matter in the said perspective, went on to hold that the act/s involved in conviction under Section 294, I.P.C. per se established moral turpitude. They should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294, I.P.C. on today's society and its standards, and its changing views of obscenity. The matter unfortunately was dealt with casually at all levels."

10. The said decision came to be followed by a Division Bench of this Court in its decision reported in MANU TN 2025/2005 [The Director General of Police and others vs. C.Senthilkumar and another] wherein this Court did not lay down any new law but confirmed the findings of the State Administrative Tribunal and dismissed the said Petition.

11. Thereafter, the learned counsel relied upon the judgment of the Supreme Court reported in 1999 (1) SCC 246 [Commissioner of Police, Delhi and another vs. Dhaval Singh]. That was a case where the antecedent was suppressed in the application form and largely the case turned out on its own facts and the case is not much helpful to the case of the petitioners.

12. The learned counsel also cited another decision of the Supreme Court reported in 1988 (Supp) SCC 795 [T.S.Vasudevan Nair vs. Director of Vikram Sarabhai Space Centre and others] and relied upon the passage found in paragraph 2 of the judgment, which reads as follows:

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Para 2: "We have heard learned counsel for the parties. In the special facts and circumstances of this case we feel that the appellant should not have been denied the employment on the sole ground that he had not disclosed that during emergency he had been convicted under the Defence of India Rules for having shouted slogans on one occasion. We, therefore, set aside the judgment of the High Court and also the order dated August 1, 1983 cancelling the offer of appointment. The respondents shall issue the order of appointment to the appellant within three months appointing him as a Lower Division Clerk...."

[Emphasis added]

The said decision is given by the Supreme Court exercising its extraordinary power under Article 14 of the Constitution of India and such a power is not available to the High court exercising jurisdiction under Article 226 of the Constitution of India. In any event, the said decision is not appropriate as in the present case, we are concerned with the vires of the Rule made by the State.

13. Before the other decisions in favour of the State are discussed, it is necessary to refer to Article 311 (2) of the Constitution of India which is the Magna Carta or Charter of all the rights of a Government servant. Article 311(2) of the Constitution of India, apart from providing safeguards for a Government servant from being removed from service, clearly states in Article 311 (2)(a) that such a safeguard does not apply where a person is dismissed or removed or reduced in rank on the ground of conduct, which has led to his conviction on a criminal charge. A bare reading of this constitutional provision will clearly show that it is not merely the conviction on a criminal charge which should disqualify a person from being in the Government service but it is the ground of conduct which has led to his conviction. Therefore, basing upon this constitutional provision, the Rules have been made to proceed with the disciplinary action against a Government servant even after his acquittal (whether on merits or on technical grounds) and Courts have repeatedly held that the power of the employer to take disciplinary action will not cease on the ground of acquittal. In fact, further provisions have been made in many Service Rules, by stating that notwithstanding the acquittal on the basis of the findings rendered by the Criminal Court, action can be taken against the Officers of the Government.

14. In the judgment of the Supreme Court reported in 1995 (3) SCC 377 [Deputy Director of Collegiate Education (Administration), Madras vs. S.Nagoor Meera], it has been held in paragraph 8 as follows:

Para 8: ".... what is relevant for clause (a) of the second proviso to Article 311(2) is the " conduct which has led to his conviction on a criminal charge" and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing

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orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal."

Further, in paragraph 9, it was held as follows:

Para 9: "... It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in Shankar Dass v. Union of India (1985 (2) SCC 358)

"Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service 'on the ground of conduct which has led to his conviction on a criminal charge'. But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly."

Para 10: what is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge."

15. The judgment in Nagoor Meera's case (cited supra) was followed by the Supreme Court vide its decision reported in 1997 (XI) SCC 383 [Union of India vs. V.K.Bhaskar] wherein in paragraph 8, the Supreme Court observed as follows:

Para 8: "The said statement in the order of dismissal indicates that the disciplinary authority has applied its mind and after considering the conduct of the respondent which has led to his conviction on a criminal charge, has arrived at the conclusion that the said conduct was such as to render the further retention of the respondent in the public service undesirable. It cannot, therefore, be said that the order of dismissal was passed without the disciplinary authority applying its mind to the nature of the conduct of the respondent which led to his conviction on a criminal charge and which has rendered him

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undesirable to be retained in service."

16. The Supreme Court in its decision reported in 1997 (4) SCC 385 [Union of India and another vs. Bihari Lal Sidhana] dealt with the case of acquittal of a Government servant and held that it was open to the competent authority to take a decision with reference to the retention of a delinquent Government servant. Paragraph 5 of the said judgment reads as follows:

Para 5: "It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control & Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

17. Even after retirement of a person from Government service, his right to receive pension is also subject to the relevant Service Rules. The Supreme Court, while reviewing the similar Service Rules framed by the Bombay Civil Services Rules, Rules 188 and 189, vide its decision reported in 1998 (2) SCC 52 [State of Maharashtra vs. M.H.Mazumdar] in paragraph 5 held as follows:

Para 5: "... Rule 189 contemplates withholding or withdrawing of a pension or any part of it if the pensioner is found guilty of grave misconduct while he was in service or after the completion of his service. Grant of pension and its continuance to a government servant depend upon the good conduct of the government servant. Rendering

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satisfactory service maintaining good conduct is a necessary condition for the grant and continuance of pension. Rule 189 expressly confers power on the Government to withhold or withdraw any part of the pension payable to a government servant for misconduct which he may have committed while in service."

[Emphasis added]

Therefore, if the law provides for an action against the Government servant, who is similarly involved in any criminal action while in service or after retirement from service, there is no reason as to why the same law should not be made as a pre-requisite for entering into service.

18. In fact, while considering the question whether the Government can reject candidates on the basis of their political faith which they had before entering into service, the Supreme court vide its decision reported in 1983 (2) SCC 145 [State of Madhya Pradesh vs. Ramashanker Raghuvanshi and another] observed in paragraph 2 as follows:

Para 2: "... Yet the Government of Madhya Pradesh seeks to deny employment to the respondent on the ground that the report of a Police Officer stated that he once belonged to some political organisation. It is important to note that the action sought to be taken against the respondent is not any disciplinary action on the ground of his present involvement in political activity after entering the service of the Government, contrary to some Service Conduct Rule. It is further to be noted that it is not alleged that the respondent ever participated in any illegal, vicious or subversive activity. There is no hint that the respondent was or is a perpetrator of violent deeds, or that he exhorted anyone to commit violent deeds. There is no reference to any addiction to violence or vice or any incident involving violence, vice or other crime. ... The whole idea of seeking a police report on the political faith and the past political activity of a candidate for public employment appears to our mind to cut at the very root of the Fundamental Rights of equality of opportunity in the matter of employment, freedom of expression and freedom of association. It is a different matter altogether if a police report is sought on the question of the involvement of the candidate in any criminal or subversive activity in order to find out his suitability for public employment. But why seek a police report on the political faith of a candidate and act upon it? Politics is no crime. Does it mean that only True Believers in the political faith of the party in power for the time being are entitled to public employment?...."

[Emphasis added]

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19. The Supreme Court has held that even an Electorate has a right to know the antecedents and criminal records of candidates standing in public elections and has upheld the validity of the directives issued by the Election Commission in this regard. This right to information about the antecedents of the candidates has been made as a pre-requisite for the Electorate to have a fair knowledge about the candidate and also to free the electoral mechanism.

20. The National Commission to Review the working of the Constitution in its report submitted in March 2002 made a recommendation with reference to the disclosure of criminal records of candidates standing in elections. In the Charter dealing with the Criminalisation found in paragraph 4.12, the Commission not only was satisfied with reference to the disqualification on the ground of conviction by the Criminal Court but also in paragraph 4.12.8 recommended as follows:

> "4.12.8. The Commission feels that the proposed provision laying down that a person charged with an offence punishable with imprisonment which may extend to five years or more should be disqualified from contesting elections after the expiry of a period of one year from the date the charges were framed in a court of law should equally be applicable to sitting Members of Parliament and State Legislatures as to any other such person."

21. Subsequent to this recommendation, the Supreme Court in its decision reported in 2002 (5) SCC 294 [Union of India vs. Association for Democratic Reforms and another] dealt with a question where the Election Commission can be empowered to issue direction as ordered by the High Court. The following passage is found in paragraph 22 of the judgment:

> Para 22:".... Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided — its result, if pending — whether charge is framed or cognizance is taken by the court. There is no necessity of suppressing the relevant facts from the voters...."

22. Thereafter, the Court had an occasion to go into the issue relating to the provision for right to information of candidates standing in the election vide its decision reported in 2003 (4) SCC 399 [People's Union for Civil Liberties (PUCL) and another vs. Union of

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India and another] and declared that the candidates, who are contesting in election, have no right to privacy in the matter of declaration of their antecedents and assets. In paragraph 47, the following passage is found:

Para 47:".... Further, by declaration of a fact, which is a matter of public record that a candidate was involved in various criminal cases, there is no question of infringement of any right of privacy. Similarly, with regard to the declaration of assets also, a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar fiscal legislation. Not only this, but once a person becomes a candidate to acquire public office, such declaration would not affect his right of privacy. This is the necessity of the day because of statutory provisions of controlling widespread corrupt practices as repeatedly pointed out by all concerned including various reports of the Law Commission and other committees as stated above."

23. The same judgment was also came to be followed by the Supreme Court in its judgment reported in 2003 (2) SCC 386 [Dhananjay vs. Chief Executive Officer, Zilla Parishad, Jalna].

24. After a survey of all the aforesaid decisions, it can be firmly said that Explanation (1) to Rule 14 (b) (iv) does not suffer from the vires of arbitrariness and it is not discriminatory. A Government servant whether in service or before enters into service or his post retirement, is controlled by similar Rules. Therefore, the contention of the learned counsel for the petitioners that the Rules are discriminatory must fail. Lastly, it must be stated that the State also being an employer can set its own standards in the matter of recruitment of its own personnel and in the case of Uniformed Services, it must apply rigorous standard so that all and sundry does not get into the force.

25. In fact, 2000 years ago, a Roman writer Juvenal posed the rhetorical question:-

'Sed quis cusiodiet ipsos custodes?'
which means,

"Who shall guard the guards themselves?"

26. In the light of the above, the challenge to the Rule 14(b) (iv) of the Rules must fail and hence, W.P.Nos. 10953 and 10979 of 2007 shall stand dismissed. Consequently, the impugned orders dated 28.11.2005 and 23.01.2006 passed by the Director General of Police / first respondent also do not call for any interference as the Director General of Police had applied his mind and exercised his discretion. In view of the same, the other writ petitions, viz., W.P.Nos.3547 of

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2006 and 9558 of 2006 also must fail and are accordingly, dismissed. The parties are directed to bear their own costs. Consequently, connected miscellaneous petitions also stand closed.

gri

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. Secretary to Government
State of Tamil Nadu
Home (Pol IX) Department
Chennai - 9

2. The Director General of Police
Kamarajar Salai
Chennai-4.

3. The Tamil Nadu Uniformed Services
Recruitment Board
Anna Salai
Chennai

+ One cc to Govt Pleader SR 23444,234441,23442
+ One cc to Mr. Sathia Chandran Advocate sR 23775
TEJ (co)
sg 19/4/07

order in

W.P. Nos.3547 & 9558 of 2006 &
W.P.Nos.10953 & 10979 of 2007

Delivered on

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